

## REMARKS

The subject application has been carefully considered in view of the Examiner's latest action but the Claims are resubmitted unamended for the Examiner's further consideration as Applicant considers that these claims are patentable over the cited and applied prior art.

Applicant appreciates the reduction of the number of Groups in the restriction requirement from five to three and the election of the Claims of Group B, Claims 22-34 and 36-41 is confirmed. However, Applicant regrets to say that the latest action issued in this case by the United States Patent and Trademark Office tests the limits of Applicant's Attorney to conduct business with the United States Patent and Trademark Office with decorum and courtesy as mandated by Patent Rules (37 C.F.R.1.3).

1. Claims 22, 23, 27, 28, 32, 33, 36, 37, 38 and 41 now stand rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs, et al (US 3, 810, 442).

The previous final action has been withdrawn in view of Applicant's Appeal Brief and new grounds of rejection have been imposed including the citation of a new reference (Jacobs, et al US 3, 810, 442). The reopening of prosecution supposedly was for the purpose of applying a new and more pertinent reference. But, the allegedly relevant disclosure of this "new" reference is identical to the previously applied Waybright reference, US 5, 483, 921.

<u>Jacobs, et al</u>	Waybright
The animal is moved onto a shuttle platform 13	The animal is moved onto a car 22
Shuttle platform is moved to milking position 30	The car is moved to a milk station 32
Animal is milked while on the platform	The animal is milked while on the car
Shuttle platform is moved back to start position	The car is moved to an unload platform

Accordingly, the analysis posed by the Examiner with respect to Jacobs, et al could have been postulated with respect to Waybright so the new reference is no more relevant than is Waybright; and for this the prosecution has been reopened? Applicant respectfully requests the Examiner to point to a teaching in Jacobs, et al that is so different from that of Waybright to justify the reopening of prosecution.

What the reopening of prosecution has done however is to allow the reference (be it either Jacobs, et al or Waybright) to be applied in a surrealistic manner that ignores claimed limitations.

A. Claim 32

With respect to independent Claim 32 the Examiner acknowledges that Jacobs, et al do not disclose “the animal being removed from the transport cart as the animal remains on the transport cart during the milking process” (as it does in Waybright). This distinction however is considered immaterial because the method as claimed “does not require the unloading of the animal from the transport cart, only the moving [of] the animal from the transport cart and into the milking stall area.” This assertion is made despite the fact that Claim 32 says the cart first is translated “to operably locate the transport cart with respect to an unoccupied milking stall” followed by the step of “moving the animal from the transport cart and into the unoccupied milking stall.” It would seem the plain language of the Claim clearly provides for a separation of the animal from the cart.

In the Examiner’s analysis the floor of the Jacobs, et al cart surrealistically becomes the floor of the milking stall upon being translated into the milking area so the Jacobs, et al apparatus, according to the Examiner, now “has moved the animal from the transport cart and into the unoccupied milking stall”; this occurring despite the animal never moving relative to the cart. This interpretation ignores the

fact that the claim includes the step of “translating the ... cart...relative to a plurality of milking stalls”. If, as the Examiner states, the floor of the Jacobs, et al cart “becomes the floor of the milking stall” only after “the transport cart has translated the animal to the milking stall area” then there can be no milking stalls per se that the Jacobs, et al cart moves relative to as set out in Claim 32. The analysis thus ignores the step of “translating the ...cart along a predetermined path relative to a plurality of milking stalls.”

Likewise, if the floor of the transport cart morphs into the floor of the milking stall when the milking area is reached, at what point is there a translation of the cart “with respect to an unoccupied milking stall” as claimed? Also, once the alleged transformation to milking stall floor occurs per the Examiner’s analysis there no longer can be a transport cart so how then can there be a “moving of the animal from the transport cart and into the unoccupied stall”?

The method of Applicant’s specification and claims clearly is one where the animal is moved from one place to another on a cart and then is moved from the cart and into an unoccupied milking stall. Jacobs, et al does not do this nor is there any reference of such a method in Jacobs, et al. Moreover the reference, by having the animal remain on the shuttle while it is milked, teaches away from the invention as claimed and the rejection appears to have its genesis in Applicant’s disclosure rather than in the reference itself. As Claim 32 is considered allowable over Jacobs, et al, Claims 33, 36–38, and 41 that depend from Claim 32 also should be allowable.

#### B. Claim 22

With respect to independent Claim 22, the alleged transformation of the cart floor to a milking stall floor is repeated so the arguments as set out above with

respect to Claim 32 are equally applicable to Claim 22. In addition, Claim 22 recites the step of “rearwardly loading the ... animal into the unoccupied milking stall from the transport cart.” Jacobs, et al is said to disclose such a rearward loading in that “as the milking claw is to be placed on the teats from the rear of the animal (i.e. between the rear legs), the cow is considered to be rearwardly loaded *within* the milking stall” (emphasis added). Applicant first notes that Claim 22 does not say the animal is rearwardly loaded “within” the milking stall, it says, “rearwardly loading the ... animal *into* the unoccupied milking stall.” Certainly even the plain English is sufficient to distinguish the invention in that *a something* loaded “within” a location is distinct from loading *a something* “into” a location.

In addition, according to the Examiner’s analysis the floor of the cart becomes the floor of the milking stall when the cart moves into the milking stall area. If this is the case then the animal is already in the milking stall when the cart arrives at the milking stall area so how then can the animal be moved rearwardly into the stall if it already is in the stall? Also, according to the Examiner’s analysis, once the transport cart is at the milking stall area it becomes the floor of the milking stall. This event must be accompanied by a disappearance of the transport cart since it is not explained how the two can coexist. If the transport cart “disappears” then there can be no unloading from the transport cart in any direction let alone “rearwardly” as claimed. There is absolutely nothing in the reference that suggests or renders obvious the rearward loading of an animal into the unoccupied milking stall from the transport cart so Claim 22 together with its dependent claims 23, 27 and 28 are considered patentable over Jacobs, et al.

2. Claims 29, 30, 31, 34, 39 and 40 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs, et al further in view of van der Lely (US 5, 771,

837). The van der Lely reference is cited as showing use of robotic milking arms and the expedient of acquiring data specific to a given animal including the use of a radio frequency to do so. The disclosures of van der Lely however do not correct any of the deficiencies of Jacobs, et al so any combination of Jacobs, et al and van der Lely proposed by the Examiner would still fall short of the invention as set out in Applicant's independent claims. Accordingly, Claims 29, 30, 31, 34, 39 and 40 are considered allowable over the combination for the reasons set out above with respect to Claims 22 and 32.

3. Claims 22 (erroneously listed as Claim 21 in the Office Action) through 34 and 36–41 stand rejected under the doctrine of obviousness–type double patenting over Claims 1–24 of Applicant's U.S. Patent No. 6, 814, 026. While Applicant is prepared to file a terminal disclaimer it is believed that such is not required since the inventions are mutually exclusive and are patentably distinct. The Examiner says the patent includes an apparatus and method wherein the animal is loaded onto a cart and the cart moves "along a direction transverse to the longitudinal direction of the milking stall, with unloading the animal." This is not the case; the shuttle stalls in the patent move in a direction transverse an operator pit, not transverse the longitudinal axis of the milking stall.

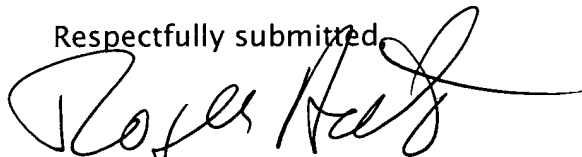
In the patent, the shuttle stalls 80 move along an axis that includes the head and tail of the animal toward and away from a milking position so there is no movement "transverse to the longitudinal direction of the milking stall". In the patent Claim 19 the shuttle stall moves along the head/tail axis of the animal between a loading position, a milking position adjacent an operator pit and an unloading position, the loading and unloading position being common. In the claims of the subject application the animal is transported to a milking stall and

then moved (or unloaded) from the transport cart and into the stall so the loading and unloading position as recited in the claims are not common as in the patent.

4. Claims 22-34 and 36-41 stand provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over Claims 1-66 of copending application Ser. No. 10/196, 789. The Examiner specifically mentions Claim 20 of the conflicting application. Claim 20 is no longer in the conflicting application so any double patenting issue may be moot.

5. The Information Disclosure Statement submitted by the Applicant identifies some 27 publications. Examiners of this application have cited an additional 11 publications (not counting the double patenting publications). The invention is fairly simple and the independent claims each recite only three simple and unambiguous method steps. In view of rejection analyses that Applicant's attorney considers strained at best, it is believed that the Examiners may be conflicted by the lack of applicable prior art notwithstanding that animals have been milked for millennia. That said, Applicant urges that absent a clear showing that the invention is obvious, the claims must be allowed.

Respectfully submitted,



Roger Aceto, Registration No. 24, 554  
HARTER, SECREST & EMERY LLP

1600 Bausch & Lomb Place  
Rochester, New York 4604  
Telephone: 585-232-6500  
Fax: 585-232-2152

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